IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20/08/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.4434 of 2001

P. Lakshmi .. Petitioner

-vs-

1.The Joint Registrar of
Cooperative Societies
Thiruvalluvar Region
Thiruvalluvar District

2.The President
C.S. 43, Kathabur Primary
Agricultural Cooperative
Bank Ltd., Chennai-55. .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent in his proceeding R.C.10599/99/ A3 dated 8.1.2001 and quash the same and which confirms the order of the 2nd respondent in his proceedings dated 2.5.98, 2.6.98 and 1.7.98 and consequently direct the respondents to treat the interregnum period as duty period with all monetary and other attendant benefits.

!For Petitioner : Mr.K.Raja

^For Respondents : Mr.A.Rathinavel
Government Advocate for R1
Mr.R.Subbarayalu
Special Government Pleader
for R2

:ORDER

The petitioner herein, who was working as an Attender in Kathavur Primary Agricultural Co-operative Bank Limited, the second respondent herein, from 1987, on dismissal from service by the orders of the second respondent and subsequent affirmation by the first respondent, questions the same by seeking a writ of certiorarified mandamus.

2. It is not in controversy that while the petitioner was working so, she was placed under suspension on 15.10.1997 by the proceedings of the second

respondent, which culminated in a charge memo on 10.11.19 97 levelling certain charges. Pursuant to an enquiry conducted, the second respondent passed the orders of dismissal of the petitioner from service by proceedings dated 2.5.1998, 2.6.1998 and 1.7.1998 giving retrospective effect from 28.3.1998. On receipt of the said dismissal orders, the petitioner challenged the same before this Court in W.P.No.17293/98, wherein this Court had directed the first respondent to pass final orders on the revision petition preferred by her. On enquiry, the Joint Registrar of Cooperative Societies, Thiruvalluvar Region, the first respondent herein, affirmed the decision of the second respondent by an order dated 8.1.2001. Hence, the petitioner has challenged the said proceedings before this Court by invoking the writ jurisdiction.

3. The learned Counsel while advancing his arguments challenged the order on the grounds that a very reading of the charge memo issued, would indicate the pre-determination of the authority to dismiss her from service; that no enquiry report was served on the petitioner; that at the time when the final orders were passed, no personal hearing was afforded, and though the dismissal orders were passed by the second respondent on 2.5.98, 2.6.98 and 1.7.98, it was given retrospective effect from 28.3.1998. Added further the learned Counsel that during the pendency of the enquiry, no subsistence allowance was given, which would be fatal to the whole enquiry, and hence, on those grounds, the orders of the lower authorities were to be set aside.

4. This Court heard the learned Government Advocate for first respondent and learned Special Government Pleader for second respondent on those contentions.

5. After careful consideration of the rival submissions and scrutiny of the available materials, what are all required to be stated is that the orders of the second respondent cannot be sustained for the simple reason that they are non-speaking orders. It is not in controversy that eleven charges were levelled against the petitioner that she prepared false bills and sold the fertilizers to outsiders; that she misappropriated the funds of the society, etc. As rightly pointed out by the learned Counsel for the petitioner, even the charge memo would be indicative of the pre-determined decision of the lower authority. Apart from that, a reading of the orders of the second respondent would clearly indicate that the lower authority has not discussed anything, but has passed the orders simply stating that the petitioner was dismissed from service. It remains to be stated that no material is available to indicate that the copy of the enquiry proceedings was served on the petitioner herein. Added further, from the available materials it could be well seen that the subsistence allowance was not given during the relevant time, but was given long subsequently. Under the circumstances, this Court is of the considered opinion that it is a fit case where the orders passed by the first and second respondents have got to be quashed, since the authorities below have not considered the matter in proper perspective, and the matter has to be remitted back to the second respondent.

6. In the result, this writ petition is allowed, quashing the orders of the first and second respondents, and the matter is remitted back to the second respondent for reconsideration. The second respondent is directed to strictly follow the procedural formalities and give a fresh disposal in accordance with law within a period of three months herefrom. No costs.

Index : yes

Internet: yes

To:

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Thiruvalluvar District

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nsv/